

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2005-0043, Kathleen M. Keenan, Trustee, Guckert New Hampshire Realty Trust v. Ossipee Realty Corporation & a., the court on March 7, 2006, issued the following order:**

The respondent, Ossipee Realty Corporation (ORC), appeals an order of the trial court granting the petition to quiet title filed by Kathleen M. Keenan, Trustee, Guckert New Hampshire Realty Trust. ORC contends that the trial court erred in finding that: (1) the petitioner was not collaterally estopped by a 2002 proceeding before the Freedom Planning Board; and (2) a 1968 deed was latently ambiguous. We reverse.

To prevail on appeal, the respondent must show that the trial court's determination of the disputed boundary was unsupported by the evidence or erroneous as a matter of law. Flanagan v. Prudhomme, 138 N.H. 561, 565 (1994). The interpretation of a deed in a quiet title dispute is ultimately to be resolved by this court. *Id.*

The respondent first argues that the petitioner was collaterally estopped from bringing this action because it failed to challenge the 2002 approval by the Freedom Planning Board (board) of a boundary line adjustment plan. The doctrine of collateral estoppel bars a party in a prior action from relitigating any issue or fact actually litigated and determined in the prior action; to apply, the issue subject to estoppel must be the same in each action, the first action must have resolved the issue finally on the merits and the party to be estopped must have appeared as a party in the first action. Cook v. Sullivan, 149 N.H. 774, 778 (2003). These conditions must be understood as particular elements of the more general requirement that a party against whom estoppel is pleaded must have had a full and fair prior opportunity to litigate the issue or fact in question. *Id.* The trial court found that the petitioner was not estopped from bringing the petition to quiet title because, although the board made its decision after having been informed that all parties involved approved the plan, in fact the petitioner, whose interests were affected by the plan, had not given approval. Because the record contains evidence to support this factual finding, we find no error. *See Flanagan*, 138 N.H. at 574 (factual findings of trial court upheld when supported by the evidence).

The respondent also contends that the trial court erred in finding a 1968 deed latently ambiguous. A deed is latently ambiguous when its language is clear but the conveyance described can be applied to two different subjects or is rendered unclear by reference to another document. *Id.* at 566. In this case, a

1968 deed, the DiPrizio-DeSimone deed (1968 deed), conveyed property that was described in part as commencing at Black Brook and then running to Broad Bay at the mouth of Black Brook. The deed also referenced the Boomer land survey in its description. In 1971, DiPrizio executed a deed to Constandino DiPrizio (1971 deed) that conveyed a ten-foot strip of land also described as running along Black Brook from Broad Bay to Alvino Road.

In its order, the trial court found that although, on its face, the 1968 deed was simple, when read in conjunction with the Boomer land survey, it was unclear whether the grantor conveyed the ten-foot strip of land in 1968 or 1971. See id. at 565-66 (parties' intention gleaned from construing language of deed from position of parties at time of conveyance and surrounding circumstances). The trial court then considered extrinsic evidence, including conflicting expert testimony, in interpreting the Boomer land survey and deeds. The Boomer survey on its face was not ambiguous. Absent some evidence that the grantor was aware that Mr. Boomer may have used certain methods in preparing surveys, it is not clear how the evidence of the idiosyncratic survey methods was relevant to a determination of the parties' intent at the time of the conveyance. The trial court's consideration of extrinsic evidence to interpret the Boomer survey was therefore error. The trial court also found that the language of the 1971 DiPrizio deed was irrelevant because the court was required to determine the intent of the grantor at the time of the conveyance. We do not limit the use of extrinsic evidence so severely. Cf. In re Pack Monadnock, 147 N.H. 419, 424 (2002) (recognizing that intent of settlor at time of creation of trust may be shown by extrinsic evidence occurring after that time).

Because the record before us compels a finding that the 1968 deed was not ambiguous, we reverse the ruling of the trial court.

Reversed.

BRODERICK, C.J., and DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,  
Clerk**